

Before the
Federal Communications Commission

Washington, DC 20554

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AUG 21 2000

In the Matter of)

Amendment of Section 73.622(b),
Table of Allotments,
Digital Television Broadcast Stations.
(Kansas City, Missouri)

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MM Docket No. 00-116
RM-9877

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Chief, Video Services Division

COMMENTS AND COUNTERPROPOSAL
OF
SAGA QUAD STATES COMMUNICATIONS, INC.

Saga Quad States Communications, Inc. ("Saga") licensee of KOAM-TV, Pittsburg, Kansas, and pursuant to Sections 1.415 and 73.623 of the Commission's Rules, hereby files its comments and counterproposal on the *Notice of Proposed Rule Making*, DA 00-1411, released June 28, 2000 ("NPRM"). The NPRM was issued as the instance of KMBC Hearst-Argyle Television ("KMBC"), licensee of television station KMBC(TV), which operates on NTSC Channel 9 at Kansas City, Missouri. KMBC has an allotment for DTV operation on Channel 14. KMBC has requested the substitution of DTV Channel 7 for its assigned Channel 14 at Kansas City. For the reasons set forth herein, the substitution is not in the public interest, and should be denied.¹

COMMENTS AND COUNTERPROPOSAL

A. Standing

Saga has standing to participate in this proceeding. KMBC's proposal to use Channel 7 at Kansas City adversely impacts Saga's use of Channel 7 for DTV use at Pittsburg. KOAM-TV is

¹ These Comments and Counterproposal are timely filed by August 21, 2000.

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licensed for operation on analog channel 7 and has an allotment for DTV channel 30. The action proposed by the Commission would adversely affect Saga because if the KMBC proposal is implemented, KOAM-TV could lose the opportunity to fully utilize Channel 7 for DTV operations at Pittsburg. Therefore, Saga has standing to participate in this proceeding.

B. The KMBC Proposal is Premature

At the outset, KMBC's proposal should be dismissed as premature, subject to refile without prejudice at a later date. By *Notice of Proposed Rule Making, In the Matter of Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MM Docket No. 00-39*, 15 FCC Rcd 5257 (2000) ("DTV NPRM"), the Commission sought comment, *inter alia*, on the date by which stations with both NTSC and DTV channels within the DTV core (Channels 2-51) would have to choose the channel they intend to keep following transition. Comments were due by May 17, 2000, with replies due by June 16, 2000. The Commission has not yet released a report and order setting forth the deadline. Until that date is established, and Saga has made a formal election to provide DTV programming on either Channel 7 or Channel 30, it is premature for KMBC to make plans to use Saga's channel in Kansas City. Saga should have the widest latitude in power, height and siting options for KOAM-TV as a DTV station. KMBC's proposal could restrict such options towards KMBC-TV. At a minimum, KMBC's petition for rule making should be dismissed without prejudice to later filing if Saga elects not to use Channel 7 at Pittsburg.

C. The KMBC Proposal is Speculative

In addition to being premature, KMBC's proposal is also highly speculative. The whole basis for KMBC's proposed channel change is the claim that it would eliminate the potential adverse impact to "over 200 land mobile facilities . . . licensed for operation within 80 km (50

miles) of the KMBC(TV) tower site." (See KBMC Petition for Rulemaking p. 2, ¶4.) However, KMBC does not demonstrate that any of the land mobile facilities would be compromised in any way. No specific mobile facility is even mentioned by KMBC. No diagrams or contour maps are offered to show how Channel 14 would adversely impact the land mobile facilities. The KMBC proposal seeks to cure a purely speculative risk by creating actual interference to Saga's KOAM-TV.

Not only is the KMBC proposal speculative, it may also be of no practical effect. KMBC states (at Petition for Rulemaking, Engineering Statement, p. 5) that "It is Hearst-Argyle's intent to return to Channel 9 for DTV operation after the transition." However, if that is the case and KMBC has no plans to use Channel 14 at Kansas City, there will be no adverse impact to land-mobile facilities. Yet this is the sole reason for requesting the channel change. Therefore, not only is this rationale for the channel change wholly speculative, it is also of no practical effect since KMBC does not intend to use Channel 14.

D. Counterproposal for Allotment of Alternate Channel

KMBC and the Commission stated that the allotment of Channel 7 to Kansas City would serve the public interest because it would eliminate the potential adverse impact to land mobile facilities licensed for operation within 80 kilometers of the KMBC-TV tower site in the 3 MHz immediately adjacent to the lower edge of Channel 14. The attached Technical Statement indicates that there are 6 potential television channels that could be allotted to Kansas City in lieu of Channel 14 that would not adversely impact land mobile facilities. They are Channels 25, 26, 32, 33, 39 and 45. Saga counterproposes the use of Channel 26 in lieu of Channel 14; however, if Channel 26 is not ultimately allocable, there are 5 alternate channels that could potentially be used. The substitution of any of these channels for Channel 14 at Kansas City would better serve

the public interest because it would eliminate adverse impact to the land-mobile facilities while having no ill effects on Saga and KOAM-TV. See, *Las Vegas, Nevada*, MM Docket No. 99-252, DA 00-1413, (released June 29, 2000), (substitution of DTV channels preferred where it would achieve gain in interference-free television service).

E. Adoption of the KMBC Proposal Would Diminish KMBC's Ability to Replicate its Grade B Service

In the DTV NPRM the Commission established "replication" as a goal in the creation of the initial DTV Table of Allotments. According to this criteria, each DTV channel allotment is supposed to match in coverage the Grade B service provided by the NTSC station with which it was paired.² In the present case, if KMBC utilizes Channel 7 for DTV, KMBC-TV will not be able to cover all of its Grade B service area to the south as the result of directionalization. Therefore, the KMBC proposal is contrary to the public interest reasons underlying the DTV NPRM.

F. Precluding Saga's Right to Elect its DTV Channel Requires an Ashbacker Hearing

In accordance with *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945), a hearing is required where applications are "mutually exclusive" and "the grant of one application would require the denial of the other."³ In the instant case, the KMBC proposal is inconsistent with Saga's ability to operate without restrictions on its DTV station on Channel 7 at Pittsburg, Kansas. Under the DTV rules, Saga has the right to make such an election at some future date. Therefore, any action by the Commission that would preclude KOAM from fully utilizing Channel 7 as a DTV station would require a hearing in accordance with *Ashbacker*.

² DTV NPRM, p. 7, ¶ 16,

³ *Ashbacker*, 326 U.S. at 328.

G. Additional Public Interest Factors

As set forth in the Technical Statement, if KMBC were allowed to claim the channel 7 position for its DTV signal, it would likely prevent KOAM-TV from fully utilizing Channel 7 to provide interference-free service to its DMA. With KMBC operating on channel 9 and its future channel 14 DTV position this does not pose a problem. Even though propagation models can be drawn for both configurations, interference and weather variance cannot be calculated. Either the outer limits of the KMBC-TV and KOAM-TV contours will not meet (excluding viewers from free over the air TV), or they will overlap creating interference (excluding viewers from reception of free over the air TV). The best interest of the public residing in the area between the contours is met only if those signals exactly meet, but from a technical standpoint, this is unrealistic. KMBC currently has NTSC channel 9 and DTV channel 14 allocated. Neither of these channels poses this problem to other NTSC or DTV stations. Additionally, there are alternate channels available to be substituted for DTV Channel 14 at Kansas City. There is no public reason to change the allocations as requested by KMBC when the allocation scheme designed by the Commission works and the one proposed may not.

Saga's counsel has been informed that the areas in question are the Joplin/Pittsburg Counties of Vernon County, MO (TV HH 7,300 and cable penetration 54%), Bourbon County, KS (TV HH 6,090 and cable penetration 58%) and Allen County, KS (TV RH 5,060 and cable penetration 78%). The impacted areas in the Kansas City DMA are Anderson County, KS (TV HH 3,120 and cable penetration 56%), Linn County, KS (TV HH 3,380 and cable penetration 34%) and Bates County MO (TV HH 6,090 and cable penetration 41%). There are significant

numbers of Households in risk of losing both free over the air signals if they have not access to cable television.

Both KMBC-TV and KOAM-TV provide viewers the safety and security of weather reports from live on-site-Doppler Radar. Counsel has been informed that the primary radial coverage of Doppler Radar is approximately 75 miles. Additionally, as distance increases from the Doppler site, the radar beam becomes wider. As the beam widens, it becomes less specific as to location. The current DMA dividing line between the Joplin/Pittsburg and Kansas City markets is 86 miles south of the KMBC-TV tower and just 44 miles north of KOAM-TV's Doppler site. Those viewers in the area of potential interference need to be able to receive a clear signal from KOAM-TV to deal with severe weather conditions. Jeopardizing this ability by authorizing both KOAM-TV and KMBC to operate on the same DTV channel is not in their best safety interest.

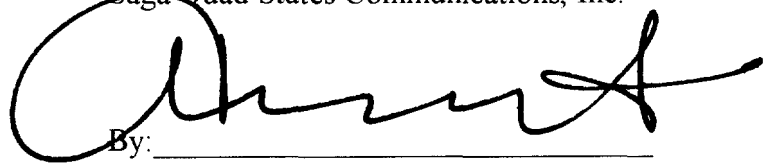
CONCLUSION

For the foregoing reasons, Saga respectfully requests the Commission to deny KMBC's proposal to reallocate Channel 7 to Kansas City, Missouri. In the alternative, in order to address the single public interest justification for the allotment of DTV 7, i.e., that DTV Channel 14 at Kansas City might adversely impact land mobile facilities, Saga has counterproposed the

allotment of DTV Channel 26 or any of 5 other alternate channels that may be allotted at Kansas City without adverse impact to land mobile facilities.

Respectfully submitted,

Saga Quad States Communications, Inc.

A large, stylized handwritten signature in black ink, appearing to read 'Smithwick', is written over a horizontal line.

By: _____

Gary S. Smithwick
Henry E. Crawford
Its Attorneys

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August 21, 2000

**TECHNICAL STATEMENT
IN SUPPORT OF COUNTER PROPOSAL
AND
COMMENTS ON BEHALF OF KOAM-TV
Re: PETITION FOR RULEMAKING
Substitute DTV CHANNEL 7 for Channel 14
Kansas City, Missouri**

These Technical Comments are in response to the proposal by KMBC, Hearst-Argyle Television, Inc. ("KMBC") on behalf of KOAM-TV, Saga Quad States Communications, Inc. ("KOAM"). The proposal by KMBC would substitute DTV Channel 7 for DTV Channel 14 at Kansas City.

KOAM-TV currently operates NTSC on Channel 7 at Pittsburg, Kansas. KOAM-TV is assigned DTV Channel 30. The KMBC petition states that its proposal might create out of band interference to some of the 200 land mobile facilities licensed for operation within 80 km (50 miles) within 3 MHz immediately adjacent to Channel 14. KMBC did not cite any specific instances of this interference.

Our studies show numerous other DTV channels available for KMBC to utilize for their DTV purposes. For example our preliminary study shows the possible use of Channels 25,26,32,33,39 and 45. Any of these frequencies would totally eliminate potential problems with the land mobile service and resolve a potential public interest issue. KOAM counter proposes the use of DTV Channel 26 at Kansas City in lieu of DTV Channel 14. Attached is technical data to support the allotment of Channel 26 at Kansas City. We assumed KMBC with a non-directional antenna. Therefore the pattern will closely replicate the KMBC NTSC signal.

KMBC also stated its intent to eventually return its DTV operation to its present NTSC Channel 9. Therefore the operation on Channel 7 would be short lived and only as a matter of convenience to KMBC since Channel 7 and 9 are so close together they could easily change between the two channels.

The KMBC proposal can technically be assigned, but it is not in the public interest. As proposed, our calculations show 3% interference. This interference could be dropped below 2% by an adjustment in the proposed KMBC pattern.

In order to protect KOAM-TV, KMBC must restrict its DTV signal toward KOAM. In so doing, KMBC DTV Channel 7 produces a loss to portions of several counties in the southern Kansas City Designated Market Area ("DMA"). The area of loss is rural where viewers must rely on terrestrial television signals, since cable service is not available. With the signal shift northward this proposal will be a poor replication of the present facilities.

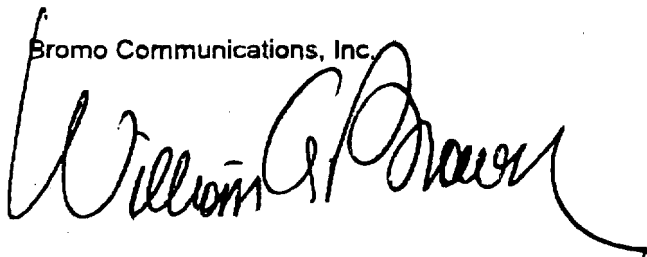
KOAM, like KMBC, wishes to maintain its DTV options of ultimately either using its licensed NTSC Channel 7 or DTV assigned Channel 30 as its DTV facility. Thus KOAM's concern is the possibility of KMBC permanently operating DTV Channel 7 and KOAM operating on the same Channel. KOAM would be not be required to restrict its DTV facilities due to the limitations imposed by co-channel KMBC. Alternatively KMBC will also be required to restrict radiation toward KOAM. Thus the loss area between the two stations will increase.

In summary, KMBC is proposing to substitute DTV Channel 7 for Channel 14 at Kansas City. This proposal would not allow a good replication of the NTSC/DTV signals. In fact there will be loss areas created in the southern Kansas City DMA while the gain area is primarily to counties in other DMA's.

KMBC wants the ability to choose either Channel 7 or Channel 9 as its permanent DTV facility. KOAM wishes the same ability to choose either its present licensed Channel 7 or their DTV assigned Channel 30. KOAM contends that if KMBC continues operation on Channel 7, then both stations would be required to limit radiation in each other's direction. The loss area will be created in a rural area between the two stations where residents currently rely primarily on terrestrial television since cable service is not available.

Since there are several DTV channels available for KMBC, KOAM believes it is in the best use of spectrum space and public interest to choose DTV Channel 26 or one of the other available channels listed above.

Bromo Communications, Inc.

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William G. Brown

Consultant for Saga Quad States Communications, Inc.

Bromo Communications Population Report

KMBC-D.A (26) Kansas City, MO

TV Outgoing Interference Study

Signal Resolution: 1.5 km

Consider NTSC Taboo: Yes

KWX error points are considered to
be interference free coverage.Masked interference points are being counted
as interference free.

Study Date: 8/21/00

Stations which receive interference:

Call Letters	H Units	Population	Area (sq. km)
KOZJ.C	0	0	4.36
KOZJ	23	70	8.75
KYNETV	149	359	31.21

Totals for KMBC-D.A

Total population to which interference is caused: 429

Total number of housing units to which interference is caused: 172

	Housing Units	Population
Missouri		
Barton County		
KOZJ	23	70

	Housing Units	Population
Iowa		
Fremont County		
KYNETV	7	11
Mills County		
KYNETV	6	18

	Housing Units	Population
Nebraska		
Cass County		
KYNETV	132	321
Otoe County		
KYNETV	4	9

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Bromo Communications Population Report

KMBC-D.A (26) Kansas City, MO

TV Incoming Interference Study

Signal Resolution: 1.5 km

Consider NTSC Taboo: Yes

KWX error points are considered to

be interference free coverage.

Interference considered within the
reference station's noise limited contour.

Threshold for reception: 39.95

Study Date: 8/21/00

Stations which cause interference:

Call Letters	H Units	Population	%	Area (sq. km)
KSAS-D.A (26)	329	802	0.044	70.74
KSNT (27Z)	470	1130	0.061	40.50
KOZJ.C (26-)	98	231	0.013	55.87
KOZJ (26-)	60	143	0.008	36.59
KPLR-D.A (26)	1	2	0.000	8.54
KYNETV (26Z)	340	815	0.044	67.90
KBTv-D (26)	13	16	0.001	6.35

Stations considered which do not cause interference:

KJMH.C (26-)
KSASTV-D (26)
KPLRTV-D (26)

Call Letters	City	State	Dist	Bear
KJMH.C (26-)	Burlington	IA	347.1	55.1
KSAS-D.A (26)	Wichita	KS	298.9	241.9
KSNT (27Z)	Topeka	KS	109.8	270.9
KOZJ.C (26-)	Joplin	MO	222.8	180.5
KOZJ (26-)	Joplin	MO	222.8	180.5
KPLR-D.A (26)	St. Louis	MO	363.8	99.3
KYNETV (26Z)	Omaha	NE	272.8	332.7
KBTv-D (26)	DES MOINES	IA	312.0	13.8
KSASTV-D (26)	WICHITA	KS	290.5	245.0
KPLRTV-D (26)	ST. LOUIS	MO	371.3	98.2

Totals for KMBC-D.A (26)

Calculation Area Population:	1,839,046	(23107.3 sq. km)
Not Affected by Terrain Loss:	1,838,012	(23000.7 sq. km)

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Total NTSC Interference:	1,746	(140.9 sq. km)
DTV Only Interference:	72	(36.4 sq. km)
Total DTV Interference:	820	(85.6 sq. km)
Interfered Population:	1,818	(177.3 sq. km)
Interference Free:	1,836,194	(22823.4 sq. km)

Percent Interference: 0.10

Terrain Blocked Population:	1,034	(106.6 sq. km)
Contour Area Population:	1,838,066		

	Housing Units	Population	% of County
Missouri			
Andrew County			
County Pop	5,841	14,632	
KMBC-D.A (26)	146	397	
Ix Free	146	397	100.00
Bates County			
County Pop	6,782	15,025	
KMBC-D.A (26)	1,792	4,335	
KOZJ.C (26-)	6	16	0.37
KOZJ (26-)	6	16	0.37
Ix Free	1,786	4,319	99.63
Buchanan County			
County Pop	35,652	83,083	
KMBC-D.A (26)	35,109	81,783	
KOZJ.C (26-)	6	13	0.02
KOZJ (26-)	5	8	0.01
KYNETV (26Z)	51	119	0.15
Ix Free	35,058	81,664	99.85
Caldwell County			
County Pop	3,649	8,380	
KMBC-D.A (26)	3,231	7,578	
KYNETV (26Z)	14	25	0.33
KBTv-D (26)	9	10	0.13
Ix Free	3,217	7,553	99.67
Carroll County			
County Pop	5,001	10,748	
KMBC-D.A (26)	763	1,659	
Ix Free	763	1,659	100.00
Cass County			
County Pop	24,337	63,808	
KMBC-D.A (26)	24,337	63,808	
Ix Free	24,337	63,808	100.00
Clay County			
County Pop	63,000	153,411	
KMBC-D.A (26)	63,000	153,411	
Ix Free	63,000	153,411	100.00
Clinton County			
County Pop	6,559	16,595	

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KMBC-D.A (26)	6,559	16,595	
Ix Free	6,559	16,595	100.00
Daviess County			
County Pop	3,613	7,865	
KMBC-D.A (26)	68	168	
Ix Free	68	168	100.00
DeKalb County			
County Pop	3,358	9,967	
KMBC-D.A (26)	1,897	6,548	
KYNETV (26Z)	1	4	0.06
KBTVD (26)	4	6	0.09
Ix Free	1,892	6,538	99.85
Henry County			
County Pop	9,317	20,044	
KMBC-D.A (26)	621	1,336	
Ix Free	621	1,336	100.00
Jackson County			
County Pop	280,729	633,232	
KMBC-D.A (26)	280,729	633,232	
Ix Free	280,729	633,232	100.00
Johnson County			
County Pop	16,010	42,514	
KMBC-D.A (26)	12,105	31,602	
KPLR-D.A (26)	1	2	0.01
Ix Free	12,104	31,600	99.99
Lafayette County			
County Pop	12,820	31,107	
KMBC-D.A (26)	12,158	29,595	
Ix Free	12,158	29,595	100.00
Livingston County			
County Pop	6,294	14,592	
KMBC-D.A (26)	1	2	
Ix Free	1	2	100.00
Platte County			
County Pop	24,362	57,867	
KMBC-D.A (26)	24,362	57,867	
Ix Free	24,362	57,867	100.00
Ray County			
County Pop	8,611	21,971	
KMBC-D.A (26)	8,611	21,971	
Ix Free	8,611	21,971	100.00

	Housing Units	Population	% of County
Kansas			
Atchison County			
County Pop	6,691	16,932	
KMBC-D.A (26)	5,782	14,790	
KYNETV (26Z)	3	12	0.08
Ix Free	5,779	14,778	99.92
Doniphan County			

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County Pop	3,337	8,134	
KMBC-D.A (26)	1,272	3,036	
KYNETV (26Z)	86	199	6.55
Ix Free	1,186	2,837	93.45
Douglas County			
County Pop	31,782	81,798	
KMBC-D.A (26)	31,565	81,247	
KSAS-D.A (26)	5	13	0.02
Ix Free	31,560	81,234	99.98
Franklin County			
County Pop	8,926	21,994	
KMBC-D.A (26)	3,929	9,536	
KSAS-D.A (26)	38	102	1.07
KOZJ.C (26-)	21	55	0.58
KOZJ (26-)	10	28	0.29
Ix Free	3,891	9,434	98.93
Jefferson County			
County Pop	6,314	15,905	
KMBC-D.A (26)	4,461	11,006	
KSAS-D.A (26)	252	600	5.45
KSNT (27Z)	416	970	8.81
KYNETV (26Z)	185	456	4.14
Ix Free	4,035	9,997	90.83
Johnson County			
County Pop	144,155	355,054	
KMBC-D.A (26)	144,155	355,054	
Ix Free	144,155	355,054	100.00
Leavenworth County			
County Pop	21,264	64,371	
KMBC-D.A (26)	21,264	64,371	
Ix Free	21,264	64,371	100.00
Linn County			
County Pop	4,811	8,254	
KMBC-D.A (26)	1,092	1,668	
KSAS-D.A (26)	23	61	3.66
KOZJ.C (26-)	54	121	7.25
KOZJ (26-)	30	71	4.26
Ix Free	1,037	1,543	92.51
Miami County			
County Pop	8,971	23,466	
KMBC-D.A (26)	8,869	23,202	
KSAS-D.A (26)	11	26	0.11
KOZJ.C (26-)	11	26	0.11
KOZJ (26-)	9	20	0.09
Ix Free	8,858	23,176	99.89
Shawnee County			
County Pop	68,991	160,976	
KMBC-D.A (26)	72	222	
KSNT (27Z)	54	160	72.07
Ix Free	18	62	27.93
Wyandotte County			

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County Pop	69,102	161,993	
KMBC-D.A (26)	69,102	161,993	
Ix Free	69,102	161,993	100.00

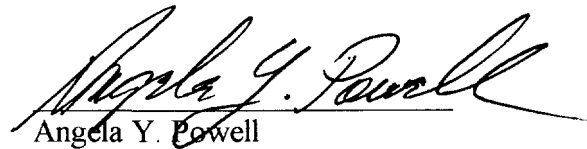
CERTIFICATE OF SERVICE

I, Angela Y. Powell, a paralegal in the law offices of Smithwick & Belendiuk, P.C., do hereby certify that copies of the foregoing Comments and Counterproposal of Saga Quad States Communications, Inc., have been served by United States mail, postage prepaid, this 21st day of August, 2000 upon the following:

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